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BRUSSELS MEETS WESTPHALIA: THE EUROPEAN UNION AND THE UNITED NATIONS

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ABSTRACT

As 'the world's most successful case of multilateralism' the European Union has demonstrated since its early beginnings a commitment to multilateralism as the preferred form of global governance. In particular, it recognized the UN as the apex of the international system, with which the EU aspires to cooperate and through which it intends to pursue its policy objectives. However, the Union's engagement with the UN has in practice been fraught with difficulties. The EU, as a regional international organization with strong supranational features, has been faced with the challenges of multilateral diplomacy in a predominantly state-centric global institution. It has so far not only been unable to assume the aspired leadership position, but faces a general lack of effectiveness. This paper seeks to provide an overview of the legal basis for EU participation at the UN and the various forms that this participation can take. It addresses issues of EU internal coordination and external representation at the UN, takes a closer look at the practical EU-UN cooperation on the ground and highlights the ensuing challenges and opportunities. While the Lisbon reform of the EU external relations architecture has led to noticeable improvements in terms of continuity and effectiveness, considerable challenges still remain.

KEYWORDS

European Union, United Nations, Effective Multilateralism, Legal Status, External Representation, Internal Coordination, EU-UN Cooperation

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TABLE OF CONTENTS

1. Introduction: The UN as a 'European Priority' 4

2. Legal Basis for EU Engagement with the UN 6

2.1 EU Legal Framework 6

2.2. UN Legal Framework 8

2.2.1 Member status 9

2.2.2 Observer status 10

2.2.3 No formal status 11

3. External Representation and Internal Coordination 12

3.1 External Representation 12

3.2 Internal Coordination 14

4. EU-UN Cooperation on the Ground 17

5. Challenges and Opportunities 21

6. Conclusions 24

Electronic copy available at: https://ssrn.com/abstract=2509914

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1. INTRODUCTION: THE UN AS A 'EUROPEAN PRIORITY'

As 'the world's most successful case of multilateralism'[1] the European Union ('EU' or 'Union') demonstrated since its early beginnings a commitment to multilateralism as the preferred form of global governance.[2] Yet, it was only with the European Security Strategy ('ESS'), adopted by the European Council in December 2003, that the EU endorsed its idiosyncratic concept of 'effective multilateralism' as the central guiding principle of its external action.[3] Recognizing that global problems require global solutions, the ESS states that European 'security and prosperity increasingly depend on an effective multilateral system' and proclaims the 'development of a stronger international society, well-functioning international institutions and a rule-based international order' as a European objective.[4] Importantly, the ESS highlights the pivotal role of the United Nations ('UN') in the global multilateral order. Recognizing the UN Security Council's ('UNSC') 'primary responsibility' in the area of international peace and security and the status of the UN Charter as the 'fundamental framework for international relations', the ESS states that '[s]trengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority'.[5] 2003 also saw the publication of a Commission Communication on 'The European Union and the United Nations: The choice of multilateralism'[6] which set out a general strategy for EU-UN cooperation. Again, the Union's commitment to multilateralism as a 'defining principle' of its external action was reiterated, as was the importance of the UN as the 'pivot of the multilateral system'.[7] EU commitment to multilateralism in general and to the UN as its principal forum was taken a step further in the 2008 Report on the implementation of the ESS.[8] By declaring that 'Europe must lead a renewal of the multilateral order', the Union set itself apart from other actors in the multilateral system and took on additional responsibilities, committing itself to the aspiration of assuming a leadership role.[9]

While EU official statements and policy documents have since then contained an abundance of references to the concept of 'effective multilateralism',[10] it was with the entry into force of the

[1] Katie Verlin Laatikainen and Karen E Smith (eds), *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave Macmillan 2006) 2.
[2] Jan Wouters, Sijbren de Jong and Philip De Man, 'The EU's Commitment to Effective Multilateralism in the Field of Security: Theory and Practice' (2010) 29 Yearbook of European Law 164, 170.
[3] European Council, 'European Security Strategy: A Secure Europe in a Better World', Brussels, 12 December 2003.
[4] Ibid 9.
[5] Ibid.
[6] Communication from the Commission to the Council and the European Parliament, 'The European Union and the United Nations: The choice of multilateralism', COM(2003) 526 final, 10 September 2003.
[7] Ibid 3.
[8] European Council, 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', Brussels, 11 December 2008, S407/08.
[9] Ibid 2.
[10] See for an analysis of the 'effectiveness' component of the concept Wouters, de Jong and De Man (n 2).

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Lisbon Treaty that the Union's commitment to multilateralism was considerably strengthened. Through a total of 15 references to the UN and the UN Charter,[11] the Treaty on European Union ('TEU'), the Treaty on the Functioning of the European Union ('TFEU') and the accompanying Protocols and Declarations elevated the principle of multilateralism to the rank of primary law and enshrined the UN framework as the guide and benchmark of EU external action. Of particular relevance is Article 3(5) TEU which defines the 'respect for the principles of the United Nations Charter' as one of the foreign policy goals of the EU. Article 21 TEU provides additional detail, stating that the Union 'shall promote multilateral solutions to common problems, in particular in the framework of the United Nations' and affirming the promotion of an 'international system based on stronger multilateral cooperation and good global governance' as an objective of the Union's foreign policy. Other TEU and TFEU provisions oblige the EU institutions to comply with the commitments taken on in the UN system when implementing EU policies, and to cooperate with relevant UN bodies.[12]

Although the UN, as the paramount institution of multilateral global governance, has been recognized as an organization which the EU seeks to support, with which it aspires to cooperate and through which it intends to pursue its policy objectives,[13] the Union's engagement with the UN has in practice been fraught with difficulties. The EU, as a regional international organization with strong supranational features, has been faced with the challenges of multilateral diplomacy in a predominantly state-centric global institution. The acquisition of participatory rights in various UN bodies required an investment of considerable diplomatic and political capital, and the implementation of the obtained rights frequently led to additional controversies. Despite its considerable economic and political clout, the EU has not – yet – been able to assume a leadership role in the UN framework. It frequently finds itself in a minority position, failing not only to build cross-regional coalitions but also to garner support among its close allies for its positions and initiatives. Among the culprits identified in recent scholarship are a lack of cohesion, the unclear division of external competences, as well as the time-consuming and inflexible internal coordination process.

The Lisbon Treaty attempted to remedy some of these shortcomings through extensive institutional reforms, including in particular the creation of the office of the multi-hatted High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission ('HR/VP') and the establishment of the European External Action Service ('EEAS'), but also by creating the office of a permanent President of the European Council and by limiting the role of the rotating Council Presidency. While the new external relations architecture of the EU has led to noticeable improvements in terms of continuity and effectiveness of the Union's engagement with the UN, considerable challenges still remain.

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[11] Art. 3(5), Art. 21(1) TEU, Art. 21(2)(c), Art. 34(2), Art. 42(1) and (7) TEU, 7th recital of the preamble of the TFEU, Art. 208(2), Art. 214(7), Art. 220(1) TFEU, 3rd and 8th recital preamble, as well as Art. 1(b) Protocol No 10 on permanent structured cooperation, Declaration No 13 concerning CFSP, Declaration No 14 concerning CFSP; cf. Jan Wouters, Anna-Luise Chané, Jed Odermatt and Thomas Ramopoulos, 'Improving the EU's Status in the UN and the UN System: An Objective Without a Strategy?' in Christine Kaddous (ed) *The European Union in International Organisations and Global Governance* (Hart Publishing, forthcoming).

[12] See e.g. TFEU arts 208(2), 214(7), 220(1).

[13] Cf the three chapters of the Commission Communication 'The European Union and the United Nations: The choice of multilateralism' (n 6).

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This chapter seeks to provide an overview of the legal basis for EU participation at the UN and the various forms that this participation can take. It will address issues of EU internal coordination and external representation at the UN, take a closer look at the practical EU-UN cooperation on the ground and highlight the ensuing challenges and opportunities.

2. LEGAL BASIS FOR EU ENGAGEMENT WITH THE UN

The status of the EU in the UN and the UN system is determined by both the Union's internal division of powers with the Member States, as incorporated in the TEU and the TFEU, and by the constituent treaties (including the UN Charter), resolutions, rules of procedure and other instruments that form the legal framework of the UN and the UN system. EU participation is conditioned on (1) the existence of a legal instrument (e.g. resolution, exchange of letters or regional economic integration organization ('REIO') clause[14]) allowing for the participation of the EU in (2) a UN body whose mandate falls into an area of EU competence. The legal framework of the respective UN body additionally determines the specific arrangement of EU participation and the associated rights and duties.

2.1 EU LEGAL FRAMEWORK

The TFEU devotes a separate title on the 'Union's relations with international organisations'.[15] Article 220(1) TFEU provides that the 'Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies […]'. From the perspective of its own constitutional framework, the Union thus has the power and obligation to establish and maintain contacts with the UN and the UN system and to participate in their work. Similar provisions on cooperation with international organizations exist for a variety of different policy areas, e.g. Article 191(4) TFEU (environment), Article 211 TFEU (development cooperation) and Article 212(3) TFEU (economic, financial and technical cooperation). With regard to the cooperation with the UN and the UN system, however, Article 220(1) TFEU may be said to constitute a *lex specialis*.[16] It should be noted that 'cooperation' within the meaning of these provisions does not necessarily include the right to obtain or even request membership in a UN body, given that this would presuppose the conclusion of an international agreement in accordance with the requirements and the procedure of Articles 216 and 218 TFEU.[17]

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[14] EU participation in UN bodies can be governed by a variety of legal instruments, see only UNGA Res 65/276 (3 May 2011) UN Doc A/RES/65/276 granting the EU enhanced observer rights in the UNGA and certain subsidiary bodies; Exchange of letters of 21 December 1989 and 22 December 1989 between the European Commission and the International Labour Organization [1989] OJ C 24/8, renewed by an exchange of letters of 14 May 2001 [2001] OJ C 165/23, concerning the EU's observer status in the ILO; or FAO Constitution art II(3) which contains a so called REIO clause, allowing for the membership of an international organization.

[15] TFEU, Title VI, arts 220-221.

[16] Kirsten Schmalenbach in Christian Calliess and Matthias Ruffert (eds) *EUV/AEUV: Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta* (4th edn, Beck 2011) TFEU art 211 n 3, art 212 n 13; Rudolf Streinz and Tobias Kruis in Rudolf Streinz (ed) *EUV/AEUV: Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union* (2nd edn, Beck 2012) TFEU art 211 n 2, art 212 n 22.

[17] Schmalenbach (n 16) art 220 n 7; Juliane Kokott in Rudolf Streinz (ed), *EUV/AEUV: Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union* (2nd edn, Beck 2012) TFEU art 220 n 35.

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While EU primary law does not contain a provision explicitly granting the Union a general competence to acquire membership in an international organization,[18] such a competence is widely recognized, based on an opinion of the European Court of Justice (ECJ or Court). In Opinion 1/76 the ECJ affirmed the Community's power to set up an international institution and to provide it with decision-making power.[19] This reasoning was implicitly confirmed almost two decades later in the ECJ's Opinion 1/94, which dealt with the Communities' participation in the World Trade Organization ('WTO'), of which the EU is a founding member. As the Court expressly recognized the Union's power to establish a new international organization, it has been concluded *a majore ad minus* that the EU also has the power to accede to an already existing organization. Membership in an international organization requires the conclusion of an international agreement according to the requirements and procedure outlined in Articles 216 and 218 TFEU. Article 216(1) TFEU provides that the Union may conclude agreements with international organizations in four cases: (1) where the Treaties so provide, (2) where the conclusion of an agreement is necessary in order to achieve an objective referred to in the Treaties, (3) where this is provided for in a legally binding Union act or (4) where this is likely to affect common rules or alter their scope.[20] While numbers one and three refer to cases in which an express competence exists, numbers two and four refer to implied competences. The EU may thus conclude international agreements whenever this is necessary to attain a Treaty objective, as well as in all those areas where it holds exclusive or shared internal competences.

As Hoffmeister has stated, '[f]rom a legal perspective, the case for a formal status of the European Union in multilateral fora is strongest in policy areas subject to exclusive competence of the European Community'.[21] But also in those areas of shared EU-Member States competences, in which the EU has made extensive use of its competences, a strong argument for EU participation in an international organization can be made. The Union's membership in the Food and Agriculture Organization ('FAO') and in the Codex Alimentarius Commission, for example, corresponds to the extensive use of its shared competences in the field of agricultural policy (Article 4(2)(d) TFEU). Its full participant status in Conferences concerning issues of fisheries and development cooperation are in line with the corresponding shared and 'parallel' competences provided for in Article 4(2)(d) and 4(4) TFEU.[22] Nevertheless, strong internal

[18] Piet Eeckhout, *EU External Relations Law* (2nd edn, OUP 2011) 222.

[19] Opinion 1/76 *Draft Agreement establishing a European laying-up fund for inland waterway vessels* [1987] ECR 741 para 5; implicitly confirmed by Opinion 1/94 *World Trade Organization* [1994] ECR I-5267.

[20] Note that principles 2 and 4 were developed in ECJ case law and only later codified in TFEU art 216(1), see Case 22/70 *European Agreement on Road Transport* [1971] ECR 263; Opinion 1/76 *Draft Agreement establishing a European laying-up fund for inland waterway vessels* [1977] ECR 741.

[21] Frank Hoffmeister, 'Outsider or Frontrunner? Recent Developments Under International and European Law on the Status of the European Union in International Organizations and Treaty Bodies' (2007) 44 Common Market Law Review 41, 42; see also Michael Emerson, Rosa Balfour, Tim Corthaut, Jan Wouters, Piotr Maciej Kaczynski and Thomas Renard, 'Upgrading the EU's Role as Global Actor: Institutions, Law and the Restructuring of European Diplomacy', Centre for European Policy Studies (CEPS), Egmont – The Royal Institute for International Relations, European Policy Centre (EPC), Leuven Centre for Global Governance Studies, University of Leuven, 2011, 4; and Jan Wouters, Jed Odermatt and Thomas Ramopoulos, 'The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities' in Michael Smith, Stephan Keukeleire and Sophie Vanhoonacker (eds) *The Diplomatic System of the European Union: Evolution, Change and Challenges* (Routledge, forthcoming).

[22] See for example the EU's full participant status at the 1992 UN Conference on Environment and Development ('Rio Conference'), the 1994 International Conference on Population and Development, the 1995 World Summit for Social Development, the 2001 Third UN Conference on the Least Developed Countries, the 2002 World Summit on Sustainable Development or the 1995 UN

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competences do not necessarily correspond to strong participatory rights. The International Labour Organization ('ILO') is considered as one of the examples where the Union's weak (observer) status is insufficient to ensure the effective exercise of its wide-reaching competences with regard to employment policy. Similarly, the European Commission (not even the EU as such) only has observer status in the International Maritime Organization ('IMO') and the EU only has an ad-hoc observer status in the International Civil Aviation Organization ('ICAO') despite its considerable competences in the field of both maritime and air transport (Article 4(2)(g) TFEU) and the extensive use thereof.

While EU law thus grants the Union the competence to obtain observer or even full member status in the UN system, depending on whether the field of activity of a given UN body corresponds to the Union's internal division of competences with its Member States, the actual acquisition of such a status depends on the institutional framework of the respective UN forum.

2.2. UN LEGAL FRAMEWORK

The UN legal framework is the second decisive factor which determines the possibility and extent of EU engagement in the organization. The UN remains a predominantly state-oriented institution, and therefore a challenging environment for EU foreign policy and diplomacy. Only a small minority of UN bodies allow other international organizations to join as full members. The vast majority either limit their participation to narrow observer rights or excludes any formal participation at all. In line with its commitment to effective multilateralism and in order to safeguard the exercise of its competences at the international level, the Union has continuously sought to ensure a strong presence in the UN. In its 2003 Communication 'The European Union and the United Nations: The Choice of Multilateralism', the Commission declared that the Community 'should be given the possibility to participate fully in the work of UN bodies where matters of Community competence are concerned, and Member States should contribute effectively towards this'.[23] Full membership was regarded as the preferred status and ultimate goal. However, in reality the EU's efforts for status enhancement have only yielded slow and partial successes, and have met considerable obstacles, both external and with the EU's own Member States. European Commission President Barroso and Vice-President Ashton proposed a far less ambitious policy in their 2012 'Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon'.[24] While this strategy still holds onto the aim of an 'improvement of the EU status and its alignment with the objectives of the EU Treaties', it avoids any endorsement of concrete negotiation goals.[25] So far, as far as the UN system is concerned, the EU only holds member status in the FAO and in the Codex Alimentarius Commission. It has observer status in most UN

Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: Jan Wouters, Frank Hoffmeister and Tom Ruys (eds) *The United Nations and the European Union: An Ever Stronger Partnership* (TMC Asser Press 2006), annex.

[23] Communication from the Commission to the Council and the European Parliament – The European Union and the United Nations: The choice of multilateralism, COM(2003) 526 final, 23.

[24] Communication to the Commission from the President in Agreement with Vice-President Ashton – Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon, C(2012) 9420 final, 20 December 2012.

[25] See for a detailed analysis of the Barroso-Ashton Strategy, Wouters, Chané, Odermatt and Ramopoulos (n 11).

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bodies, and acquired enhanced participation rights in the UNGA in 2011. In a number of bodies the EU is nevertheless still not formally represented, most importantly in the UNSC.

2.2.1 *Member status*

Article 4(1) UN Charter, which states that '[m]embership in the United Nations is open to all other peace-loving *states*' (emphasis added) is generally understood to limit membership in the main organization to states only, thereby prohibiting the accession of other international actors, such as the EU.[26] However, it does obviously not bar the multitude of bodies and fora in the UN system to include provisions in their respective governing instruments which allow for membership.

The FAO was the first and is so far the only UN Specialized Agency that amended its Constitution in order to allow for the accession of the EU (then still the European Economic Community, EEC). In light of the EEC's wide-reaching agricultural competences, first contacts between both organizations were established as early as the 1950s.[27] The EEC started to participate as an observer in the meetings of the FAO, acquired enhanced participation rights in 1970 and finally obtained membership status in 1991, after the FAO Conference had amended the FAO Constitution to include a REIO clause.[28] As a 'Member Organization',[29] the EU enjoys largely the same participation rights as Member States, including the right to submit proposals and to vote. Nevertheless, there remain a few important exceptions, which render its status inferior to the one held by states. In particular, the EU does not have the right to participate in certain restricted committees[30] and the committees responsible for the internal working of the conference, it does not have voting rights for elective places[31] and budget matters[32], and it may not hold office in the Conference, the Council and their subsidiary bodies.[33]

In 2003 the EC also gained member status in the *Codex Alimentarius* Commission, a subsidiary body of the FAO and the World Health Organization ('WHO'). The Union's participation rights there are even weaker than in the FAO, given that the determination of a quorum, and thereby the Union's voting power, depends on the number of EU Member States which are present.[34] The EU may therefore not vote on behalf of all its Member States but only on behalf of those which attend the session. As *Hoffmeister* has noted, this is a 'legally unsatisfactory arrangement […] because Member States vested competence in the Community by concluding the EC Treaty: they do not grant ad hoc "empowerments" through their presence'.[35]

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[26] Hoffmeister (n 21) 41.
[27] Wouters, Chané, Odermatt and Ramopoulos (n 11).
[28] Ibid.
[29] FAO Constitution art II(3).
[30] Programme Committee, Finance Committee, Committee on Constitutional and Legal Matters, FAO Constitution art II(9), FAO General Rules rule XLVI.
[31] FAO General Rules rule XLV(2).
[32] FAO Constitution art XVIII(6).
[33] FAO Constitution art II(9); FAO General Rules rules XLIII(3), XLIV.
[34] Rules of Procedure of the Codex Alimentarius Commission rule II(8).
[35] Hoffmeister (n 21) 44.

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Although the 1991 amendment of the FAO Constitution was at that time expected to prompt other UN bodies to follow suit, so far there have been no similar developments in the UN framework.

2.2.2 *Observer status*

The EU has observer status in a considerable number of UN bodies. Among them are the UNGA[36] and its programmes and funds, the Economic and Social Council ('ECOSOC') and its functional and regional commissions,[37] specialized agencies, such as the ILO,[38] the United Nations Educational, Scientific and Cultural Organization ('UNESCO'), the WHO, as well other bodies such as the International Atomic Energy Agency ('IAEA').[39] While the participation rights of observers can vary, they usually include the right to attend (formal) meetings and the right to speak. They generally exclude the right to vote, to raise points of order or to submit candidates. Observers are usually seated apart from the Member States. They may typically speak only after all the Member States have spoken and are allocated shorter speaking time slots than the Member States.[40]

Given that these limited participation rights may conflict with the Union's effective exercise of those competences that have been conferred to it by its Member States, the EU has sought to improve its observer status by turning it into a full membership or by enhancing it with additional rights. One of the most notable examples is the 2011 'upgrade' of the Union's observer status in the UNGA, which aimed to align the Union's representation in the UNGA with its changed system of external representation after the entry into force of the Lisbon Treaty. In particular, the EU sought the possibility to participate in its own right instead of having to rely on the rotating Council Presidency. A first draft resolution was introduced in the UNGA in September 2010 but it failed to be adopted.[41] Even some of the Union's traditional allies, such as Australia, Canada and New Zealand, did not support the Union's proposal, thus contributing to the EU's 'shambolic

[36] The EU has held observer status in the UNGA since 1974, see UNGA Res 3208 (XXIX) (11 October 1974).

[37] With regard to the regional commissions the Union's observer status is subject to invitation, Wouters, Hoffmeister and Ruys (n 22) 403.

[38] Exchange of letters of 21 December 1989 and 22 December 1989 between the European Commission and the International Labour Organization [1989] OJ C 24/8, renewed by an exchange of letters of 14 May 2001 [2001] OJ C 165/23.

[39] Wouters, Hoffmeister and Ruys (n 22) annex.

[40] Cf the speaking time arrangements of the HRC, where observers are allocated 1-2 minutes less speaking time than Member States, depending on the type of discussion, HRC, 'Information note for ease of reference on speaking time arrangements', 24th session, 9-27 September 2013.

[41] The Union's diplomatic debacle around its UNGA status upgrade has received considerable scholarly attention, see for example Evan Brewer, 'The Participation of the European Union in the Work of the United Nations: Evolving to Reflect the New Realities of Regional Organizations' (2012) 9 International Organizations Law Review 181; Geert De Baere and Esa Paasivirta, 'Identity and Difference: The EU and the UN as Part of Each Other' in Henri De Waele and Jan-Jaap Kuipers (eds) *The Emergence of the European Union's International Identity – Views from the Global Arena* (Martinus Nijhoff 2013) 21-42; Jan Wouters, Jed Odermatt and Thomas Ramopoulos, 'The Status of the European Union at the United Nations General Assembly' in Inge Govaere, Erwan Lannon, Peter Van Elsuwege and Stanislas Adam (eds) *The European Union in the World: Liber Amicorum Professor Marc Maresceau* (Brill 2014) 211-223.

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defeat'.[42] After increased outreach and substantive amendments, UNGA Resolution 65/276 was eventually adopted on 3 May 2011. Although the final Resolution had been watered down, the EU achieved its core goal, the right to be represented through its own officials. Its enhanced participation rights include:

1. To be inscribed on the list of speakers among representatives of major groups, in order to make interventions,
2. To participate in the general debate of the UNGA,
3. To have its relevant communications circulated directly, and without intermediary, as documents of the Assembly, meeting or conference,
4. To present proposals and amendments orally,
5. To exercise the right of reply.[43]

The EU explicitly does not have the right to vote, to co-sponsor draft resolutions or decisions, or to submit candidates.[44]

The practical implementation of these rights subsequently entailed considerable and unexpected difficulties.[45] Some UN Member States, most vocally the CARICOM group, advocated a narrow interpretation of UNGA Resolution 65/276, fearing an erosion of the intergovernmental character of the body and the principle of sovereign equality of the UN Member States. In particular the right 'to be inscribed on the list of speakers *among representatives of major groups*' (emphasis added) triggered controversies about whether major groups represented by states should take preference. Another dispute focused on the right to deliver an explanation of vote, which some considered to be only assigned to those actors that also had a right to vote. Most of those issues have been resolved in subsequent sessions.[46] Nevertheless, the realization that the successful implementation of formally obtained rights cannot be taken for granted prompted President Barroso and Vice-President Ashton to call for continued efforts to ensure the full implementation of the Resolution.[47]

2.2.3 *No formal status*

The UN Security Council ('UNSC') is one of the few UN bodies in which the EU holds no formal status. Instead, the EU has to rely on those of its Member States that have either a permanent seat (France and the United Kingdom) or have been elected as temporary Council members (on

[42] Paul Luif, quoted in Judy Dempsey, 'For Europe, a Challenge to Make Its Voice Resonate' (*The New York Times*, 13 October 2010) <http://www.nytimes.com/2010/10/14/world/europe/14iht-letter.html?_r=3&> accessed 24 June 2014.
[43] UNGA Res 65/276 (3 May 2011) UN Doc A/RES/65/276 para 1.
[44] Ibid annex para 3.
[45] See for more detail Wouters, Chané, Odermatt and Ramopoulos (n 11).
[46] Jan Wouters and others, 'Organisation and Functioning of the European External Action Service: Achievements, Challenges and Opportunities', Study for the European Parliament, Directorate-General for External Policies of the Union, EXPO/B/AFET/2012/07, February 2013, 79.
[47] Communication to the Commission from the President in Agreement with Vice-President Ashton – Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon, C(2012) 9420 final, 20 December 2012.

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average two other EU Member States).[48] Aiming to safeguard EU representation even in the absence of formal presence, Article 34(2) TEU provides that the EU Member States have the duty to represent the positions and the interests of the Union.[49] The Treaty also strengthened the role of the HR/VP in the UNSC, obliging Member States to request that the HR/VP be invited to a meeting whenever a Union position on a UNSC agenda item exists.[50] Even in the absence of membership or observer status, the HR/VP – in most cases, the EU Ambassador - has regularly been able to represent the EU's position in the UNSC.[51] Nevertheless, there is still no 'strong collective EU presence' in the UNSC.[52] Proposals for a single EU seat on the UNSC have so far not found sufficient political support to present a realistic alternative. While they have been endorsed by various EU institutions and actors, in particular the EP, the former High Representative Javier Solana and the former Commissioner for External Relations and the European Neighborhood Policy, Benita Ferrero-Waldner, the United Kingdom and France have been concerned to maintain their strong position at the UNSC.[53]

3. EXTERNAL REPRESENTATION AND INTERNAL COORDINATION

As a Union of 28 Member States the EU requires sophisticated internal coordination mechanisms in order to ensure that all EU and Member States representatives at the UN 'speak with one voice'. In addition, a complex framework of Treaty provisions and internal arrangements governs the external representation of the EU in the various UN bodies.

3.1 EXTERNAL REPRESENTATION

Before the entry into force of the Lisbon Treaty, the external representation of the Union was ensured by the European Commission concerning 'first pillar' (i.e. Community) issues, and by the Member State holding the rotating Council Presidency concerning all other issues. The advantage of this solution was that the Council Presidency as a UN Member State easily fit within the state-centric structure of the UN. It could smoothly and prominently deliver presidential statements for the EU in speaking slots reserved for states, circulate documents and negotiate with third countries. The downside was, however, a lack of stability due to the six-monthly rotation. Third states criticized the lack of transparency of the external representation, due to the ever changing 'hats'. Moreover, logistical issues ensued and EU representation appeared chaotic when Commission and Presidency representatives had to switch seats during meetings depending on the agenda item.[54]

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[48] Sieglinde Gstoehl, '"Patchwork Power" Europe: The EU's Representation in International Institutions' (2009) 14 European Foreign Affairs Review 385, 400.
[49] TEU art 34(2).
[50] Ibid.
[51] See for a list of statements: European Union Delegation to the United Nations – New York, 'EU Statements at the UN Security Council', <http://www.eu-un.europa.eu/articles/articleslist_s52_en.htm> accessed 24 June 2014.
[52] Spyros Blavoukos and Dimitris Bourantonis, 'The EU's Performance in the United Nations Security Council' (2011) 33 Journal of European Integration 731, 733.
[53] Ibid 737 et seq.
[54] De Baere and Paasivirta (n 41) 25.

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The Lisbon Treaty not only abolished the three-pillar structure of the EU, it also sought to increase the coherence and unity of the Union's external representation through a series of institutional reforms. In areas of EU competence – which includes the CFSP as a special competence as well as non-CFSP matters where the Union has exclusive competence or exercised its shared competences – the Union is now solely represented through its own officials. Depending on the subject matter and on the level of the meeting, the responsibility for the Union's external representation falls either upon the Commission, the President of the European Council, the HR/VP or the EEAS. Member States remain competent to conduct their own foreign policy, albeit in line with the principle of sincere cooperation (Article 4(3) TEU). Their competences comprise of both areas in which no powers have been conferred to the EU, as well as those areas of shared EU-Member States competences where the EU has not exercised its competences. Whenever an issue falls within both an area of EU and national competences, the responsible representative will be determined based on whether or not the 'thrust'[55] or the 'preponderance'[56] of the issue lies within an area of EU competence.

The Commission represents the Union in all areas of EU competence that do not fall under the CFSP[57], with the President of the Commission assuming the role of EU representative at summit level.[58] Concerning issues that fall under the CFSP, the tasks of external representation are divided between the HR/VP and the President of the European Council.[59] The latter only plays a limited role in this context. As Article 15(6) TEU provides, the President of the European Council ensures the external representation 'at his level and in that capacity' and 'without prejudice to the powers of the High Representative'. His tasks are therefore mainly reduced to representing the Union at the level of Heads of State or Government, for example during the 'High Level' General Debate at the beginning of each year's ordinary session of the UNGA.[60]

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[55] Cf Arrangement concerning preparation for the meetings of the FAO as well as interventions and voting, 18 December 1991, unpublished, reproduced in Rachel Frid, *The Relations between the EC and international organizations – Legal Theory and Practice* (Kluwer 1995) annex VI, art 2.3. The 1991 Arrangement was updated in 1992 and 1995. In 2013 the Commission proposed to revise the existing Arrangements. The Draft Arrangement provides that an 'entrusted Member State' will deliver common statements whenever the 'common position primarily contains elements not covered by an EU position', the assessment of which will be based on 'the main expected impact of the policy pursued within the FAO on the EU or on its Member States', COM(2013) 333 final, annex 2, para 3.3. This proposal was met with criticism in the Council, where a majority of delegations opted for maintaining the current division of competences, Presidency Non-Paper, Doc No 5337/14.

[56] Cf Code of Conduct between the Council, the Member States and the Commission on the UNESCO negotiations on the draft Convention on the protection of the diversity of cultural contents and artistic expressions, Doc No 5768/05, para 3; Code of Conduct between the Council, the Member States and the Commission for the participation of the Community and its Member States in meetings regarding the implementation of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Doc No 5914/07, para 4; Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ C 340/11 art 8.

[57] TEU art 17(1), which also makes exception for 'other cases provided for in the Treaties', by which external representation in monetary matters seems to be meant.

[58] Sieglinde Gstoehl, 'EU Diplomacy After Lisbon: More Effective Multilateralism?' (2011) 17 Brown Journal of World Affairs 181, 186.

[59] TEU arts 15(6), 27(2).

[60] Geoffrey Edwards, 'The EU's foreign policy and the search for effect' (2013) 27 International Relations 276, 281; Gstoehl (n 58) 186; the President of the European Union has addressed the UNGA during each session since 2011, cf 'Address by Herman Van Rompuy, President of the European Council, 66th United Nations General Assembly General Debate', New York, 22 September 2011, <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/124714.pdf>; 'Herman Van Rompuy, President of the European Council, Address to the 67th General Assembly of the United Nations', New York, 26 September 2012,

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The HR/VP on the other hand bears the main responsibility of conducting the CFSP. This includes not only the responsibility to drive forward the development of this policy, but also to lead the political dialogue with third countries and to represent the Union in international organizations and at international conferences. Nevertheless, the division of work between the President of the European Council and the HR/VP is not clearly determined.[61] Article 15(6) TEU deliberately contains a vague formulation. The respective roles will therefore be flexibly shaped through both cooperation and coordination, but potentially also through power plays and turf battles between the respective office holders. The Union Delegations are responsible for the representation of the Union at the UN.[62] EU Delegations to UN bodies exist in Geneva (established in 1961), New York (1964), Paris (1964), Nairobi (1976), Vienna (1979) and Rome (1993).[63] They cover CFSP and non-CFSP matters[64] and lend assistance to the HR/VP, the President of the European Council, the President of the Commission, and the Commission at the summit level as well as in other settings.[65] The EEAS also supports and cooperates with the diplomatic services of the EU Member States in order to ensure the consistency of the Union's external action.[66] The EU Member States are lastly responsible for representing Union positions whenever the EU's participatory rights are weak.[67] While the rotating Council Presidency lost its formal role as an external representative of the Union under the Lisbon Treaty, it is in practice still frequently relied upon to speak 'on behalf of the EU'.[68]

3.2 Internal Coordination

Internal coordination of the Union's positions in UN fora serves a variety of purposes, all of which contribute to the larger goal of increasing the effectiveness and the impact of the external action of the EU. Primarily, coordination between the various EU Member States and EU institutions is necessary to ensure that all actors 'speak with one voice' and vote consistently. Secondly, in those fora where the EU has no official status, coordination takes place in order to ensure that the positions taken by Member States are not only consistent, but also in line with existing EU positions. In addition, whenever both the EU and its Member States have member

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<http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/132612.pdf>; 'Herman Van Rompuy, President of the European Council, Speech to the General Assembly of the United Nations', New York, 25 September 2013, <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/138823.pdf> all accessed 25 June 2014.

[61] Xi Jin and Madeleine O Hosli, 'Pre- and Post-Lisbon: European Union Voting in the United Nations General Assembly' (2013) 36 West European Politics 1274, 1278.

[62] TFEU art 221(1).

[63] Edith Drieskens, 'What's in a Name? Challenges to the Creation of EU Delegations' (2012) 7 The Hague Journal of Diplomacy 51, 53.

[64] Gstoehl (n 58) 186.

[65] Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L 201/30 art 2.

[66] Ibid art 3(1).

[67] Cf ECJ, Opinion 2/91 *ILO* [1993] ECR I-1061 para 5; ECJ, Case C-45/07 *Commission v. Greece* [2009] ECR I-701 para 31.

[68] See only the HRC, where the rotating Council Presidency still frequently speaks on behalf of the EU: Jan Wouters and Katrien Meuwissen, 'The European Union at the UN Human Rights Council: Multilateral Human Rights Protection Coming of Age?' (2014) European Journal of Human Rights 135, 161.

Electronic copy available at: https://ssrn.com/abstract=2509914

status in a UN body ('mixity'), coordination is necessary to determine who will exercise the voting and speaking rights with regard to each individual agenda item.[69]

Article 4(3) TEU commits the EU Member States to the principle of sincere cooperation, which, as one of the fundamental principles of EU law, permeates all policy areas and all state functions. In the area of external action, it binds the Member States to refrain from any act that might weaken the negotiating position of the Union.[70] In the area of CFSP, Article 24(3) TEU provides more specifically that the 'Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area'. The commitment to a coherent Union policy limits the freedom of the EU Member States to take unilateral action and presupposes some degree of internal coordination. This duty of coordination is elevated to a legal obligation through Article 34(1) TEU, which states that 'Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums'. With regard to the UNSC, where the EU has no formal status and not all EU Member States are present, Article 34(2) TEU obliges the participating Member States to 'concert', to 'defend the positions and the interests of the Union' and to keep the other EU Member States and the HR/VP 'fully informed'.

In practice these legal obligations are translated into a complex coordination process, spread over multiple venues, bodies and channels. Generally, the process can be divided into the formulation of the general strategies in Brussels, and the fine-tuning of those positions on the ground in New York, Geneva, Rome or other meeting places of UN bodies. In Brussels, the Council of the European Union develops the priorities and positions of the Union at the UN. It is assisted by the Political and Security Committee ('PSC'), which serves as the main contact point for the EU Delegation in New York with regard to CFSP and CSDP issues.[71] Nevertheless, by far the largest part of the work is done in the Council's multiple working groups and committees, many of which have direct relevance for EU participation in the UN.[72] Of primary importance is the United Nations Working Party ('CONUN') whose responsibilities include, among others, monitoring the work of the UN, coordinating candidatures for high-level UN posts and leading the coordination process with regard to UN conferences.[73] CONUN plays a 'supervising role'[74] with regard to UN matters dealt with by the various thematic and geographic Council working parties. For example, several working parties under the Agriculture and Fisheries Council ('AGRI') deal with the Union's participation in the FAO[75] and the Working Party on International

[69] In case of mixity, member rights can generally only be exercised on an alternative basis by either the EU or its Member States, see e.g. FAO Constitution art II(8).

[70] Wolfgang Kahl in Christian Calliess and Matthias Ruffert (eds) *EUV/AEUV: Das Verfassungsrecht der Europäischen Union mit Europaeischer Grundrechtecharta* (4th edn, Beck 2011) TEU art 4 n 100.

[71] Maximilian B Rasch, *The European Union at the United Nations: The Functioning and Coherence of EU External Representation in a State-centric Environment* (Martinus Nijhoff 2008) 126.

[72] Degrand-Guillaud estimates that approximately 70% of Council texts are agreed in working groups, Anne Degrand-Guillaud, 'Actors and Mechanisms of EU Coordination at the UN' (2009) 14 European Foreign Affairs Review 405, 416.

[73] Rasch (n 71) 130; Degrand-Guillaud (n 72) 416.

[74] Rasch (n 71) 130.

[75] In particular the Coordination Working Party, the Codex Alimentarius Working Party, the Working Party on External Fisheries Policy and the Working Party on Forestry.

Electronic copy available at: https://ssrn.com/abstract=2509914

Environment Issues coordinates the Union's policy with regard to negotiations taking place in the United Nations Environment Programme ('UNEP') and the High-level Political Forum on Sustainable Development**.** The Union's human rights policy at the UN – in particular at the UNGA's Third Committee and the Human Rights Council ('HRC') – falls under the responsibility of the Working Party on Human Rights ('COHOM'), whereas issues of development cooperation, disarmament and arms control are dealt with in the Working Party on Development Cooperation and in the Working Party on Global Disarmament and Arms Control, respectively. Usually working parties meet no more than once per month, generally in a closed setting, convening delegates from the 28 Member States' capitals. Since the entry into force of the Lisbon Treaty, the chairmanship of many of the Council's preparatory bodies has been taken over by EEAS officials, thereby replacing the six-monthly rotating Presidency.[76]

The strategies developed in Brussels require further refinement through 'on the ground' negotiations at the various UN bodies. As with the chairmanship of many Council working parties, the EEAS has succeeded the rotating Council Presidency as the leader of the local coordination process. EU Delegations accredited to multilateral organizations, including the UN organizations in Geneva, Paris, Nairobi, New York, Rome, and Vienna, were supposed to 'assume as soon as possible the role and functions […] performed by the rotating Presidency in terms of local coordination'[77] upon the entry into force of the Lisbon Treaty, which presented them with no small challenge in terms of expertise and manpower.[78] An estimated 1300 coordination meetings are held in New York each year, another 1000 meetings in Geneva.[79]

It is the task of the HR/VP to ensure coherence between the CFSP and the non-CFSP areas of EU external action at the UN (Articles 18(4) and 21(3) TEU). Commentators, however, have noticed the HR/VP's 'lop-sided persona'[80] with its extensive competences in the field of CFSP and considerably lesser powers as a member of the Commission. Despite her status as one of the Vice Presidents in the latter institution, the HR/VP has no actual authority to coordinate the external relations aspects in the portfolios of other Commissioners.[81] Even the Group of Commissioners responsible for external relations ('Relex Group'), set up in 2010[82], has so far been chaired by Commission President Barroso instead of the HR/VP.[83] Only recently the Commission President and the HR/VP have agreed on more frequent meetings of the Relex

[76] Council Decision 2009/908/EU of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council [2009] OJ L 322/28.

[77] Council of the European Union, 'Presidency report to the European Council on the European External Action Service' (14930/09) 23 October 2009, para 31.

[78] See for more detail Wouters and others (n 46) 77.

[79] Gstoehl (n 58) 183.

[80] Steven Blockmans and Martina Spernbauer, 'Legal Obstacles to Comprehensive EU External Security Action' (2013) 18 European Foreign Affairs Review 7, 13.

[81] Federiga Bindi, 'One Year On: Assessing the European Foreign Policy and the European External Action Service' (2011) 17 Brown Journal of World Affairs 125, 128; Edwards (n 60) 283.

[82] Information Note from the President, 'Commissioners groups' (22 April 2010) SEC(2010) 475 final.

[83] Blockmans and Spernbauer (n 80) fn 23.

Electronic copy available at: https://ssrn.com/abstract=2509914

Group, chaired by the HR/VP.[84] Although the HR/VP is thus in theory responsible for the coordination of the Commission's external relations competences, its means to fulfil this task in practice are limited.

4. EU-UN COOPERATION ON THE GROUND

Any analysis of EU-UN relations would be incomplete if it focused only on the institutional aspects of the partnership and ignored the actual practical cooperation between both organizations. Whereas the former remains fraught with difficulties, the latter is generally perceived more favorably. Recent years have witnessed increasing consultations between the UN and the EU, as evidenced through the conclusion of numerous strategic partnerships,[85] memoranda of understanding[86] and other agreements[87] which aim to make the cooperation between both bodies more strategic and efficient. The dialogue between EU and UN actors has intensified with frequent meetings between high-level officials of both organizations. Today, the UN operates 27 different liaison offices in Brussels, while six EU Delegations represent the Union in the major UN bodies.

EU-UN cooperation has been assigned particular importance by EU primary law in the areas of development cooperation, humanitarian aid and peace-keeping/conflict prevention. In the area of development cooperation, Article 208(2) TFEU commits the Union and its Member States to 'comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations', thereby not only presupposing a collaboration between the EU and the UN in the field of development aid, but also creating a legal obligation to adhere to those commitments and objectives that fall otherwise in the category of 'soft law'.[88] Article 214(7) TFEU goes even further, stipulating that the 'Union shall ensure that its humanitarian aid operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system', thereby creating a legal obligation to achieve coherence between EU and UN actions. Finally, Article 42(1) TEU enshrines the status of the UN Charter as the guiding legal framework for EU missions in the areas of peace-keeping, conflict prevention and international security.

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[84] EEAS Review 2013, <http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf> 8, accessed 22 July 2014. The coordinating role of the HR/VP was endorsed by the Council in its Conclusions on the EEAS Review, 17 December 2013: 'The Council underlines the importance to ensure fully the coordination role of the High Representative as Vice President of the Commission in the field of external relations within the Commission in line with Article 18 (4) of the TEU', para 6. The EP made a similar recommendation, suggesting to ensure that 'in the next Commission, [the HR/VP] realises his/her full potential as Vice-President of the Commission and is entrusted with the chairing of the group of RELEX Commissioners', European Parliament recommendation to the High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission, to the Council and to the Commission of 13 June 2013 on the 2013 review of the organisation and the functioning of the EEAS (2012/2253(INI)).

[85] E.g. the strategic partnership between the EU and UNDP, see Memorandum of Understanding concerning the establishment of a strategic partnership between the European Commission and the United Nations Development Programme, 28 June 2004.

[86] E.g. the Memorandum of Understanding between the European Union and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), 16 April 2012.

[87] E.g. the Financial and Administrative Framework Agreement between the European Community, represented by the Commission of the European Communities and the United Nations ('FAFA'), 29 April 2003, and Addendum No 1, 21/26 February 2014.

[88] Streinz and Kruis (n 16) TFEU art 208 n 37.

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The EU holds the top rank among the world's biggest development aid donors[89] covering – together with its Member States - more than 50% of the global development funding. Part of these funds is channelled through the various UN organizations which are active in the area of development cooperation, among them most importantly the FAO and the UN Development Programme ('UNDP'). Cooperation between the EU and the FAO is particularly close, as evidenced by the fact that the FAO is the only UN agency that granted the EU membership status. FAO and EU concluded a Strategic Partnership Agreement in 2004, aiming to further increase their strategic cooperation in selected policy areas.[90] While the EU does not contribute to the FAO's regular budget, it has developed into the organization's largest extra-budgetary donor through its voluntary contributions, currently funding over 150 FAO projects world-wide.[91] Going beyond EU-FAO cooperation, the EU furthermore concluded a 'Strategic Programmatic Framework on Food Security and Nutrition' bringing together the three Rome-based agencies, FAO, World Food Programme ('WFP') and International Fund for Agricultural Development ('IFAD') in June 2011, aiming 'to harmonize and coordinate the implementation of […] food security and humanitarian food assistance goals'. [92] The top beneficiary of the financial contributions of EuropeAid to the UN is, however, the UNDP, [93] with whom the EU has cooperated for the past 15 years.[94] As with the FAO, the EU sealed its cooperation with the UNDP through the conclusion of a Strategic Partnership Agreement in 2004,[95] which was again endorsed by UNDP Administrator Clark and EU Commissioner for Development Piebalgs in a joint statement in 2012.[96] Other UN institutions working in the development field that rank among the main beneficiaries of EU funding are the United Nations Children's Fund ('UNICEF'), the United Nations Relief and Works Agency for Palestine Refugees in the Near East ('UNRWA'), the WHO and the United Nations Population Fund ('UNFPA').[97]

The EU is equally active in the field of humanitarian aid and has endorsed the 'central and overall coordinating role of the United Nations, particularly the Office for the Coordination of Humanitarian Affairs (OCHA), in promoting a coherent international response to humanitarian

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[89] 'EU still world's biggest aid donor but misses own targets' (*Euractiv*, 26 August 2013) <http://www.euractiv.com/development-policy/eu-stills-world-biggest-aid-dono-news-529932> accessed 26 June 2014; FAO, 'European Union funding', <http://www.fao.org/europeanunion/funding/en/> accessed 26 June 2014.

[90] European Commission/FAO, 'Memorandum of Understanding concerning the establishment of a Strategic Partnership between the Food and Agriculture Organization of the United Nations and the Commission of the European Communities in the field of development and humanitarian affairs', 13 September 2004.

[91] FAO Technical Cooperation Department, Field Programme Management Information System (FPMIS), 'List of EU-Funded Projects', <https://extranet.fao.org/fpmis/FPMISReportServlet.jsp?type=PRJ_EU> accessed 26 June 2014.

[92] European Commission/Rome based United Nations Agencies, Statement of Intent: Programmatic Cooperation on Food Security and Nutrition, 27 June 2011.

[93] With financial contributions amounting to 3,026.72 million EUR between 2000-2012, EuropeAid Cooperation Office, 'EuropeAid Financial Contributions to the United Nations 2000-2012', <http://ec.europa.eu/europeaid/who/partners/international-organisations/documents/un_2012_en.pdf> accessed 26 June 2014.

[94] UNDP Representation Office in Brussels, 'UNDP and the European Union', <http://www.undp.org/content/brussels/en/home/partnerships_initiatives/overview/> accessed 26 June 2014.

[95] See *supra* n 85.

[96] UNDP, 'Joint Statement by EU Commissioner Andris Piebalgs and UNDP Administrator Helen Clark', 8 May 2012, <http://www.undp.org/content/undp/en/home/presscenter/speeches/2012/05/08/joint-statement-by-eu-commissioner-andris-piebalgs-and-undp-administrator-helen-clark/> accessed 26 June 2014.

[97] See *supra* n 93.

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crises'.[98] In line with this commitment and the obligation of Article 214(7) TFEU, the EU strives to closely cooperate with the UN's humanitarian aid organizations, in particular OCHA, the UN High Commissioner for Refugees ('UNHCR'), the WHO and UNICEF. Notably, the EU in 2013 assumed for the first time the chairmanship of the OCHA Donor Support Group ('ODSG'),[99] an informal forum which acts as a ''sounding board' and a source of advice on policy, management, budgetary and financial questions'.[100] As with OCHA, the EU and its Member States are among the top donors in UNHCR.[101] The EU and UNHCR cooperate not only on matters outside of the Union's borders but have also worked on setting up a Common European Asylum System ('CEAS').[102]

In 2003, the EU and the UN concluded a Financial and Administrative Framework Agreement ('FAFA'),[103] which turns the requirements of the Union's Financial Regulation[104] into contractual obligations for funding agreements between both organizations.[105] The FAFA governs the procedural side of EU contributions to the UN, including reporting requirements and issues of visibility. It provides a uniform set of rules for a large number of EU-UN projects[106] and is intended to increase the efficiency of the cooperation.[107] In light of concerns about a lack of visibility of EU contributions to UN projects, the European Commission and the UN additionally agreed on a Joint Action Plan on Visibility in 2006.[108] The Action Plan aims to ensure the implementation of the visibility provisions included in the FAFA in order to 'communicate the

[98] Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, 'The European Consensus on Humanitarian Aid' (2008/C 25/01) para 25.

[99] Permanent delegation of the European Union to the UN Office and other international organizations in Geneva, 'EU takes chairmanship of OCHA Donor Support Group (17/07/2013)', <http://eeas.europa.eu/delegations/un_geneva/press_corner/all_news/news/2013/ocha_donor_support_group_en.htm> accessed 26 June 2014.

[100] OCHA, 'How OCHA is funded', <http://www.unocha.org/about-us/ocha-funded> accessed 26 June 2014.

[101] OCHA, 'OCHA Donor Ranking (Actual ranking 2010-2011-2012 paid and pledged)', <https://docs.unocha.org/sites/dms/Documents/2010-2011-2012%20Donor%20Ranking.pdf> accessed 26 June 2014; Permanent delegation of the European Union to the UN Office and other international organizations in Geneva, 'Working with UNHCR', <http://eeas.europa.eu/delegations/un_geneva/eu_un_geneva/humanitarian_affairs/unhcr/index_en.htm> accessed 26 June 2014.

[102] See for more detail European Commission, 'Common European Asylum System', <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm> accessed 26 June 2014.

[103] *Supra* n 87.

[104] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 [2012] OJ L 298/1.

[105] European Court of Auditors, 'The Efficiency and Effectiveness of EU Contributions Channelled Through United Nations Organisations in Conflict-Affected Countries', Special Report No 3, 2011, 10.

[106] In particular it applies to the UN bodies listed in fn 1 of the FAFA, as well as to those bodies that individually acceded in line with art 15.3 of the FAFA, namely CTBTO, FAO, IAEA, ICAO, IFAD, ILO, ITU, UNCDF, UNESCO, UNIDO, UNOPS, UN-Women, WHO and WMO, see <http://ec.europa.eu/europeaid/work/procedures/financing/international_organisations/other_documents_related_united_nations/document/un_specialised_agencies_covered_by_the_fafa_en.xls> accessed 23 July 2014. On the EU side, the FAFA applies to the Commission, as well as to the European Agency for Reconstruction in Kosovo, Euratom and the European Environment Agency, which have acceded to the FAFA in 2003, 2004 and 2010 respectively, see < http://ec.europa.eu/europeaid/work/procedures/financing/international_organisations/other_documents_related_united_nations/document/let1_en.pdf>, < http://ec.europa.eu/europeaid/work/procedures/financing/international_organisations/other_documents_related_united_nations/document/let2_en.pdf> and < http://ec.europa.eu/europeaid/work/procedures/financing/international_organisations/other_documents_related_united_nations/document/exchange_of_letters_eea.pdf> all accessed 23 July 2014.

[107] Jan Wouters, 'The United Nations and the European Union: Partners in Multilateralism', Leuven Centre for Global Governance Studies, Working Paper No 1, May 2007, 12.

[108] European Commission/United Nations, 'Joint Action Plan on Visibility', 22 September 2006.

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positive results of [EU-UN] partnership more effectively to beneficiaries and other stakeholders'.[109]

Lastly, peace-keeping, conflict prevention and international security are among those policy areas where EU-UN cooperation has gained particular momentum in the past decade. EU-UN partnership in the field was prominently affirmed by the 2003 Joint Declaration on UN-EU Cooperation in Crisis Management, which established a joint consultative mechanism – the Steering Committee – in order to strengthen the inter-institutional cooperation in the areas of planning, training, communication and best-practices.[110] As indicated before, the ESS, adopted by the European Council only a few months later, recognized the supremacy of the UNSC for the maintenance of international peace and security and placed EU operations in the legal framework of the UN Charter.[111] Since then, the Union has participated in an increasing number of military and police operations, maintaining a geographical focus on Europe and Africa. While the 28 EU Member States today contribute a total of 37% of the UN peacekeeping budget,[112] EU military personnel (including police, observers and troops) only amounts to 5.5% of the personnel deployed in all UN peacekeeping operations.[113] Most of the EU's civilian and military crisis management missions so far have taken place in the context of a UN operation, while others aimed to prepare or to continue UN engagement.[114] In 2003, for example, the EU Police Mission ('EUPM') replaced the UN Mission in Bosnia-Herzegovina ('UNMIBH'), and, equally in 2003, the EU supported the UN Mission in the Democratic Republic of the Congo ('MONUC') through its rapid deployment of the 'Operation Artemis'. Currently, the EU supports the International Support Mission to the Central African Republic ('MISCA') and the African Union's ('AU') mission in Somalia ('AMISOM'), two peacekeeping missions led by the AU with the approval of the UNSC. The UNSC has explicitly recognized the Union's 'significant contribution' to international peace and security in a Presidential Statement of 14 February 2014.[115] The Statement highlights various areas of EU action, both independent and in cooperation with the UN. The three mentioned examples of 'extensive' EU-UN cooperation include the Union's support of the OPCW/UN Joint Mission for the elimination of the Syrian chemical weapons programme, the Union's role in the Middle East Quartet, and its contribution in Afghanistan, in particular through EUPOL Afghanistan and the European Gendarmerie Force ('EGF'). Lastly, the UNSC calls for further strengthening of EU-UN cooperation and invites the HR/VP to submit regular briefings to the UNSC. While EU-UN cooperation in the field has thus significantly increased over the past decade, the overall coordination could still be improved. Despite their repeated verbal commitments to a stronger inter-institutional partnership, sometimes the

[109] Ibid 2.

[110] EU/UN, 'Joint Declaration on UN-EU Co-operation in Crisis Management', 24 September 2003, available at <http://www.eu-un.europa.eu/articles/en/article_2768_en.htm> accessed 27 June 2014.

[111] European Security Strategy (n 3) 9.

[112] Permanent delegation of the European Union to the UN Office and other international organizations in Geneva, 'The EU and the UN', <http://eeas.europa.eu/delegations/un_geneva/eu_un_geneva/index_en.htm> accessed 27 June 2014.

[113] UN, 'Monthly Summary of Contributions (Police, UN Military Experts on Mission and Troops) As of 31 May 2014', <http://www.un.org/en/peacekeeping/contributors/2014/may14_1.pdf> accessed 27 June 2014.

[114] Richard Gowan, 'The UN and European Strategy' in Sven Biscop and Richard Whitman (eds) *The Routledge Handbook of European Security* (Routledge 2013) 270.

[115] UNSC, Statement by the President of the Security Council (14 February 2014) S/PRST/2014/4.

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disconnect between both actors persists. For example, there are a number of fora where both the EU and the UN have independently from one another launched parallel missions, in particular in Afghanistan (EUPOL and UNAMA), in the Democratic Republic of the Congo (EUSEC/EUPOL and MONUSCO) and in Somalia (EUNAVFOR and UNPOS). Critics posit that the cooperation and coordination between those missions is 'minimal or even non-existent'.[116]

5. CHALLENGES AND OPPORTUNITIES

There are a number of factors which could turn the EU's engagement with the UN into a success story. This includes above all the Union's reformed institutional external relations architecture, which, by creating continuity, holds the potential to considerably increase the effectiveness and coherence of EU action within the UN framework. The creation of the posts of President of the European Council and HR/VP as well as the establishment of the EEAS not only buffer the Union's external action from the six-monthly changes entailed by the rotation of the Council Presidency, they also allow for the creation of an institutional memory and provide third countries with the necessary 'European phone number'. EU Delegations at the various UN bodies have successfully assumed their new responsibilities,[117] even though the transition period after the entry into force of the Lisbon Treaty was not without difficulties.[118] The fact that the coordination in both settings – in Brussels and on the ground – is now largely chaired by EEAS officials, may contribute to lessening the often perceived distance between the decision-makers in the capital and the diplomats in the Delegations.[119] An analysis of the Union's voting records in recent UN sessions shows that voting cohesion is generally quite high, thus indicating the success of the internal coordination mechanisms. Split votes have become rare and are usually limited to very sensitive issues, e.g. the Israel/Palestine conflict or the use of drones.[120] The realization that intensive internal coordination should not come at the expense of external outreach has prompted a number of EU actors to rethink the coordination process, aiming to make it more efficient and to ensure a more strategic planning of EU action in UN fora. COHOM, for example, has launched a new practice to hold a meeting with the ambassadors of the EU Member States in Geneva in the beginning of each calendar year, in order to formulate the Union's annual priorities in the UN human rights fora and to thus allow for a more

[116] Alexandra Novosseloff, 'United Nations-European Union Cooperation in the Field of Peacekeeping: Challenges and Prospects', GGI Analysis Paper No 4/2012, June 2012, 12; this criticism was repeated verbatim by the Deputy Permanent Representative of Rwanda at the UN, Olivier Nduhungirehe, in his statement at the UN Security Council Briefing on the UN-EU cooperation, 15 February 2014, <http://rwandaun.org/site/2014/02/15/statement-by-deputy-permanent-representative-olivier-nduhungirehe-at-the-un-security-council-briefing-on-the-un-eu-cooperation/> accessed 27 June 2014.

[117] Wouters and others (n 46) 78.

[118] Experiences at the various EU Delegations were mixed. The EU Delegation at the UN in New York achieved a relatively smooth transition owing to its extensive preparations, whereas the UN Delegation in Geneva encountered more difficulties, among others due to the Union's fragmented participation rights in the various Geneva-based UN bodies and the ensuing complex legal and political environment, see Wouters and others (n 46) 79.

[119] Cf Rasch (n 71) 131.

[120] See e.g. HRC Res A/HRC/22/L.41 (19 March 2013) concerning the 'Follow-up to the Report of the UN Independent International Fact-Finding Mission on the Gaza Conflict', where the Czech Republic abstained while all other EU Member States voted in favor, or the recent HRC Res A/HRC/25/L.32 (24 March 2014) on 'Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law', which caused a three-way split among EU Member States with Ireland voting in favor, France and the United Kingdom voting against and Austria, the Czech Republic, Estonia, Germany, Italy and Romania abstaining.

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coordinated and proactive outreach. Apart from these institutional aspects, it is the multilateral nature of the EU that might prove to be an advantage in the UN framework after all. Not only do the EU's 'multiple voices' come with the benefit of the extensive expertise, capacities and third country networks of the 28 Union Member States, but the EU, as a prime example of peace and stability through regional integration, may itself serve as a model and leader of successful multilateralism.

This assessment should not, however, distract from the fact that the Union is still far off from realizing its full potential in the UN and the UN system. One of the main issues is the EU's frequent inability to translate its high degree of voting cohesion into actual impact. A number of studies in recent years have demonstrated that the EU often fails to garner sufficient support for its initiatives in UN bodies and to prevent initiatives by third countries which run counter to its policy preferences.[121] Although the Union is frequently in a numerical minority position in the UN setting and therefore has to rely on forming strong, ideally cross-regional, coalitions, its capacities are still primarily bound by the time-consuming internal coordination process. As a negotiator the EU is widely perceived as a slow and inflexible 'bloc', which comes to the table with painstakingly elaborated and hardly amendable positions. It has also been commented that the Union rarely takes strong and confrontational stances, given that it has to represent a compromise of 28 views. EU positions tend to aim for the lowest common denominator in order to avoid a voting defeat.[122] It is possible that these issues will partially be resolved once the Union's post-Lisbon institutional architecture is fully implemented. A number of developments indicate that the relevant EU actors are well aware of the problem and are looking for solutions. COHOM's initiative to develop clear priorities covering the entire calendar year and all UN human rights bodies is a step in the right direction, allowing, for example, EU Delegations in third countries to start lobbying for Union policies well in advance of the respective session. In addition, the Commission has recently addressed the internal negotiation process at the FAO, where the mixed membership of the EU and its Member States and the ensuing need to coordinate the alternative exercise of membership rights causes an additional burden. In its 2013 Communication on 'The role of the European Union in the Food and Agriculture Organisation (FAO) after the Treaty of Lisbon' ('FAO Communication')[123] the Commission proposes a more flexible coordination process in which the elaboration of full statements would be the exception and the drafting of 'lines to take' the rule. The proposed new 'Arrangements between the Council and the Commission regarding the Exercise of Membership Rights of the

[121] See only S Gstoehl (n 58); Diana Panke, 'Regional Power Revisited: How to Explain Differences in Coherency and Success of Regional Organizations in the United Nations' (2013) 18 International Negotiation 265; Karen E Smith, 'The European Union at the Human Rights Council: speaking with one voice but having little influence' (2010) 17 Journal of European Public Policy 224; Karen E Smith, 'The European Union and the Politics of Legitimization at the United Nations' (2013) 18 European Foreign Affairs Review 63; Daniel C Thomas, 'Still Punching below Its Weight? Coherence and Effectiveness in European Union Foreign Policy' (2012) 50 Journal of Common Market Studies 457.

[122] A prominent example is the Union's support of HRC Res 7/20, which terminated the expert mandate for the DR Congo, even though it had previously argued for a renewal, HRC Res 7/20 (27 March 2008); cf Sudeshna Basu, 'The European Union in the Human Rights Council' in Jan Wouters, Hans Bruyninckx, Sudeshna Basu and Simon Schunz (eds) *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora* (Palgrave Macmillan 2012) 91 et seq.

[123] Communication from the Commission to the Council, 'The role of the European Union in the Food and Agriculture Organisation (FAO) after the Treaty of Lisbon: Updated Declaration of Competences and new arrangements between the Council and the Commission for the exercise of membership rights of the EU and its Member States', COM(2013) 333.

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European Union and its Member States in the Food and Agriculture Organisation (FAO)'[124] ('FAO Arrangements') are currently under revision in the Council, where Member States have already expressed their resistance against the envisaged amendments.

It is the lingering fear of some Member States for a silent 'competence creep'[125] and for a loss of standing in international fora that frequently stands in the way of a stronger EU presence at the UN. Not only have they often been reluctant to support the Union's quest for stronger participation rights in UN fora,[126] they have fought over the use of nameplates,[127] the phrasing of declarations of competence[128] and the introductory clauses of statements. A prominent example is the United Kingdom's 2011 blockage of a considerable number of EU statements, in the context of a dispute over whether statements on matters of shared EU/Member States competences should be delivered 'on behalf of the EU' or 'on behalf of the EU and its Member States'.[129] While a set of arrangements adopted in October 2011 was able to preliminarily settle the conflict, no final solution appears yet to have been found.[130] Nevertheless, it is not only an internal but also an external lack of support that hinders the Union's effective participation at the UN. Third states have in the past been reluctant to grant the EU participation rights in UN fora, based on a mix of concerns about endangering the state-centric system of the UN and the principle of sovereign equality of states, as well as on a lack of sufficient knowledge about the exact nature and workings of the EU and other regional integration organizations. These problems became particularly apparent during the Union's quest for enhanced participation rights in the UNGA[131], but also when the EU tried to obtain negotiation rights with regard to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[132] Despite recent attempts to push for a stronger status of the EU in the UN[133], the prospects for

[124] Ibid annex 2.

[125] Françoise D Schild, 'The Influence of the Food and Agriculture Organization (FAO) on the EU Legal Order' in Ramses A Wessel and Steven Blockmans (eds) *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations* (Asser Press 2013) 228.

[126] E.g. with regard to EU attempts to obtain enhanced participation rights in ICAO, cf Ramses A. Wessel and Bart Van Vooren, 'The EEAS's diplomatic dreams and the reality of European and international law' (2013) 20 Journal of European Public Policy 1350, 1354 et seq.; or with regard to the IMO, cf Wouters, Chané, Odermatt and Ramopoulos (n 11).

[127] See the United Kingdom's insistence that Member States should have the right to 'intervene in support of an agreed EU statement from behind their national nameplate' in the context of the negotiations on the new FAO Arrangements, United Kingdom, Department for International Development, Explanatory Memorandum on COM (2013) 333 final, Doc No 10368-13, 27 June 2013, para 17.

[128] The United Kingdom criticized the Commission's proposal for an updated Declaration of Competences to be submitted to the FAO, alleging that it lacked 'any recognition of the extent to which the EU has not exercised its competence under shared competence areas', United Kingdom, Department for International Development, Explanatory Memorandum on COM (2013) 333 final, Doc No 10368-13, 27 June 2013, para 3.

[129] Julian Borger, 'EU Anger over British Stance on UN Statements' (*The Guardian*, 20 October 2011) <http://www.guardian.co.uk/world/2011/oct/20/uk-eu-un-statements-wording> accessed 25 June 2014.

[130] Council of the European Union, 'EU Statements in Multilateral Organisations – General Arrangements', Doc No 15901/11, 24 October 2011; for more detail see Catherine Flaesch-Mougin, 'Représentation externe et compétences de l'Union européenne: quelques réflexions à propos des arrangements généraux du Conseil relatifs aux déclarations de l'UE dans les organisations multilatérales' in Chahira Boutayeb (ed) *La Constitution, l'Europe et le droit – Mélanges en l'honneur de Jean-Claude Masclet* (Publications de l'Université Paris-Sorbonne 2013) 571-592.

[131] See *supra*, section 2.2.2.

[132] For more detail see Wouters, Chané, Odermatt and Ramopoulos (n 11).

[133] See e.g. *supra*, section 2.2, the 2012 'Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon'.

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status upgrades are generally dim. The gap between internal EU competences and external participation rights that exists in a number of UN bodies will therefore most likely persist for the foreseeable future.

This has consequences for EU-UN cooperation on the ground. The disconnect between the Union's significant financial contribution and its lack of participation rights at the policy level raises the question whether the EU is 'a payer or a player' in its relationship with the UN. The Union contributes actively to the UN's work in the areas of development cooperation and humanitarian aid, but it only has a modest observer status in the UNDP, the WFP, UNRWA, UNFPA, UNICEF and other competent UN bodies. Nevertheless, while a weak status hinders the EU from actively shaping the policy formulation in the UN, a strong status is no panacea either.[134] Even if the EU acquires the strongest participatory rights, its actual impact depends on how it fills them with life. For example, in the FAO the EU sought to establish a 'more policy-oriented type of cooperation'[135], but commentators disagree on whether there is really a 'true partnership' between both organizations,[136] or whether the FAO sees its cooperation with the EU 'mostly about securing EU funding'.[137] The EU should not let itself be relegated to the 'payer' role but should play an active part in the agenda-setting and strategy development in line with its own policy preferences and values. This means not only that the Union must actively seek to bring its status in UN bodies in line with its scope of competences and actions, but also that it must make the most of those rights that it has been granted.

6. CONCLUSIONS

The EU's commitment to 'effective multilateralism' has found expression in an ever stronger partnership with the UN. Development cooperation, humanitarian aid and crisis management are only three of the policy areas where EU-UN cooperation has developed into a stable alliance of common objectives and values. Nevertheless, a lot of potential is still lost due to inconsistencies between the EU and the UN legal framework, the organizational challenges associated with a Union of 28 Member States and fears of both EU and non-EU States about a loss of status and influence. The Union's status in the UN still far too often differs from its actual competences. The unwieldy coordination process continues to bind valuable resources on the internal front, limiting the EU's capacity for proactive outreach and coalition-building. Disputes over the allocation of powers and external representation reduce the Union's impact in UN bodies by focusing the attention of the involved EU actors often too much on the process rather than on the substance. The Lisbon Treaty reforms have provided a number of tools to address some of the most pressing issues. It still remains to be seen whether all involved actors – EU

[134] See Hans Bruyninckx, Jan Wouters, Sudeshna Basu and Simon Schunz, 'The Position(s) of the EU in the UN System: The Examples of Human Rights and Environmental Governance' in Hans Bruyninckx, Jan Wouters, Sudeshna Basu and Simon Schunz (eds) *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora* (Palgrave Macmillan 2012) 253, 267, who conclude that 'possessing competence and a highly developed legal status does not guarantee the EU a central position, while having a low status does not exclude it from playing a significant role in or impact on a UN governance process or forum'.

[135] Schild (n 93) 223.

[136] Joergen Maersk Pedersen, 'FAO-EU Cooperation: An Ever Stronger Partnership' in Jan Wouters, Frank Hoffmeister and Tom Ruys (eds) *The United Nations and the European Union: An Ever Stronger Partnership* (TMC Asser Press 2006) 65.

[137] Schild (n 93) 223.

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institutions and Member States alike – will muster the degree of constructive cooperation that is necessary for their successful implementation.[138]

[138] See Jan Wouters and Thomas Ramopoulos, 'Revisiting the Lisbon Treaty's Constitutional Design of EU External Relations' in Lucia Serena Rossi and Federico Casolari (eds) *The EU after Lisbon: Amending or Coping with the Existing Treaties?* (Springer 2014) 215, 235 et seq.

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